



January 24, 2014

SENATE BILL No. 396

DIGEST OF SB 396 (Updated January 24, 2014 8:26 am - DI 103)

Citations Affected: IC 8-1.

Synopsis: Telecommunications service. Limits the authority of the utility regulatory commission (commission) with respect to interconnection, resale of telecommunications service, and unbundled access to the authority delegated to the commission under federal law. Repeals a provision authorizing the commission to establish certain rates charged by incumbent local exchange carriers to payphone service providers.

Effective: July 1, 2014.

Hershman, Merritt, Broden

January 14, 2014, read first time and referred to Committee on Commerce, Economic Development & Technology.
January 24, 2014, amended, reported favorably — Do Pass.

SB 396—LS 6786/DI 103



January 24, 2014

Second Regular Session 118th General Assembly (2014)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2013 Regular Session and 2013 First Regular Technical Session of the General Assembly.

SENATE BILL No. 396

A BILL FOR AN ACT to amend the Indiana Code concerning utilities.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 8-1-2.6-1.5, AS AMENDED BY P.L.256-2013,
2 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2014]: Sec. 1.5. (a) In acting to impose any requirements or
4 set any prices concerning:

5 (1) interconnection with the facilities and equipment of providers
6 for purposes of 47 U.S.C. 251(c)(2);

7 (2) the resale of telecommunications service for purposes of 47
8 U.S.C. 251(c)(4); or

9 (3) the unbundled access of one (1) provider to the network
10 elements of another provider for purposes of 47 U.S.C. 251(c)(3);
11 the commission shall not exceed the authority delegated to the
12 commission under federal laws and regulations with respect to those
13 actions. ~~This subsection does not affect the commission's authority~~
14 ~~under IC 8-1-2-5.~~

15 (b) Subject to any regulations adopted by the Federal
16 Communications Commission, this section does not affect:

SB 396—LS 6786/DI 103



(1) the commission's authority to mediate a dispute between providers under 47 U.S.C. 252(a);

(2) the commission's authority to arbitrate a dispute between providers under 47 U.S.C. 252(b);

(3) the commission's authority to approve an interconnection agreement under 47 U.S.C. 252(e), including the authority to establish service quality metrics and liquidated damages;

(4) the commission's authority to review and approve a provider's statement of terms and conditions under 47 U.S.C. 252(f);

(5) a provider's ability to file a complaint with the commission to have a dispute decided by the commission:

(A) after notice and hearing; and

(B) in accordance with this article; or

(6) the commission's authority to resolve an interconnection dispute between providers under the expedited procedures set forth in 170 IAC 7-7.

(c) If a provider's rates and charges for intrastate switched or special access service are:

(1) at issue in a dispute that the commission is authorized to mediate, arbitrate, or otherwise determine under state or federal law; or

(2) included in an interconnection agreement or a statement of terms and conditions that the commission is authorized to review or approve under state or federal law;

the commission shall consider the provider's rates and charges for intrastate switched or special access service to be just and reasonable if the intrastate rates and charges mirror the provider's interstate rates and charges for switched or special access service.

(d) If the commission requires a provider to file a tariff for intrastate switched access service, special access service, or any other service, the filing of the tariff with the commission serves as the public notice of the filing of the tariff. The commission shall provide the public with notice of tariff filings through the commission's Internet web site or other electronic means.

SECTION 2. IC 8-1-2.6-2, AS AMENDED BY P.L.27-2006, SECTION 19, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 2. (a) This section applies to rules and orders that:

(1) concern telecommunications service or providers of telecommunications service; and

(2) may be adopted or issued by the commission under the authority of state or federal law.

(b) Rules and orders described in this section:



(1) may be adopted or issued only after notice and hearing, unless:

(A) the commission determines in accordance with IC 8-1-2-113 that an emergency exists that requires the commission or a provider to take immediate action to:

(i) prevent injury to the business or interests of the citizens of Indiana; or

(ii) maintain a provider's financial integrity and ability to provide adequate basic telecommunications service;

(B) the commission is authorized under IC 8-1-2 to adopt a particular rule or issue a particular order without the necessity of a hearing; or

(C) after receiving notice of the commission's proposed action, all parties to a proceeding consent to the commission taking action without a hearing; and

(2) must be:

(A) consistent with this chapter; and

(B) in the public interest, as determined by the commission under subsection (d).

(c) Rules and orders described in this section must promote one (1) or more of the following:

(1) Cost minimization for providers to the extent that a provider's quality of service and facilities are not diminished.

(2) A more accurate evaluation by the commission of a provider's physical or financial conditions or needs as well as a less costly regulatory procedure for either the provider, the provider's customers, or the commission.

(3) Consumer access to affordable basic telecommunications service.

(4) Development of depreciation guidelines and procedures that recognize technological obsolescence.

(5) Increased provider management efficiency beneficial to customers.

(6) Regulation consistent with a competitive environment.

(d) In determining whether the public interest will be served, as required under subsection (b), the commission shall consider:

(1) whether technological change, competitive forces, or regulation by other state and federal regulatory bodies render the exercise of jurisdiction by the commission unnecessary or wasteful;

(2) whether the exercise of commission jurisdiction produces tangible benefits to the customers of providers; and



(3) whether the exercise of commission jurisdiction inhibits a regulated entity from competing with unregulated providers of functionally similar telecommunications services or equipment.

~~(c) This section does not affect the commission's authority under IC 8-1-2-5.~~

SECTION 3. IC 8-1-2.6-13, AS AMENDED BY P.L.256-2013, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 13. (a) As used in this section, "communications service" has the meaning set forth in IC 8-1-32.5-3.

(b) As used in this section, "communications service provider" means a person or an entity that offers communications service to customers in Indiana, without regard to the technology or medium used by the person or entity to provide the communications service. The term includes a provider of commercial mobile service (as defined in 47 U.S.C. 332).

(c) Notwithstanding sections 1.2, 1.4, and 1.5 of this chapter, the commission may do the following, except as otherwise provided in this subsection:

(1) Enforce the terms of a settlement agreement approved by the commission before July 29, 2004. The commission's authority under this subdivision continues for the duration of the settlement agreement.

(2) Fulfill the commission's duties under IC 8-1-2.8 concerning the provision of dual party relay services to deaf, hard of hearing, and speech impaired persons in Indiana.

(3) Fulfill the commission's duties under IC 8-1-19.5 concerning the administration of the 211 dialing code for communications service used to provide access to human services information and referrals.

(4) Fulfill the commission's responsibilities under IC 8-1-29 to adopt and enforce rules to ensure that a customer of a telecommunications provider is not:

(A) switched to another telecommunications provider unless the customer authorizes the switch; or

(B) billed for services by a telecommunications provider that without the customer's authorization added the services to the customer's service order.

(5) Fulfill the commission's obligations under:

(A) the federal Telecommunications Act of 1996 (47 U.S.C. 151 et seq.); and

(B) IC 20-20-16;

concerning universal service and access to telecommunications



service and equipment, including the designation of eligible telecommunications carriers under 47 U.S.C. 214.

(6) Perform any of the functions described in section 1.5(b) of this chapter.

(7) Perform the commission's responsibilities under IC 8-1-32.5 to:

(A) issue; and

(B) maintain records of;

certificates of territorial authority for communications service providers offering communications service to customers in Indiana.

(8) Perform the commission's responsibilities under IC 8-1-34 concerning the issuance of certificates of franchise authority to multichannel video programming distributors offering video service to Indiana customers.

(9) Require a communications service provider, other than a provider of commercial mobile service (as defined in 47 U.S.C. 332), to report to the commission on an annual basis, or more frequently at the option of the provider, and subject to section 4(f) of this chapter, any information needed by the commission to prepare the commission's report to the regulatory flexibility committee under section 4 of this chapter.

(10) Perform the commission's duties under IC 8-1-32.4 with respect to telecommunications providers of last resort, to the extent of the authority delegated to the commission under federal law to perform those duties.

~~(11) Perform the commission's duties under IC 8-1-2-5 with respect to interconnection.~~

~~(12)~~ **(11)** Collect and maintain from a communications service provider the following information:

(A) The address of the provider's Internet web site.

(B) All toll free telephone numbers and other customer service telephone numbers maintained by the provider for receiving customer inquiries and complaints.

(C) An address and other contact information for the provider, including any telephone number not described in clause (B).

The commission shall make any information submitted by a provider under this subdivision available on the commission's Internet web site. The commission may also make available on the commission's Internet web site contact information for the Federal Communications Commission and the Cellular Telephone Industry Association.



(13)(12) Fulfill the commission's duties under any state or federal law concerning the administration of any universally applicable dialing code for any communications service.

(d) The commission does not have jurisdiction over any of the following with respect to a communications service provider:

(1) Rates and charges for communications service provided by the communications service provider, including the filing of schedules or tariffs setting forth the provider's rates and charges.

(2) Depreciation schedules for any of the classes of property owned by the communications service provider.

(3) Quality of service provided by the communications service provider.

(4) Long term financing arrangements or other obligations of the communications service provider.

(5) Except as provided in subsection (c), any other aspect regulated by the commission under this title before July 1, 2009.

(e) The commission has jurisdiction over a communications service provider only to the extent that jurisdiction is:

(1) expressly granted by state or federal law, including:

(A) a state or federal statute;

(B) a lawful order or regulation of the Federal Communications Commission; or

(C) an order or a ruling of a state or federal court having jurisdiction; or

(2) necessary to administer a federal law for which regulatory responsibility has been delegated to the commission by federal law.

SECTION 4. IC 8-1-2.6-16 IS REPEALED [EFFECTIVE JULY 1, 2014]. Sec. 16. (a) As used in this section, "payphone service provider" means an entity, other than an incumbent local exchange carrier, that owns and operates:

(1) public or semipublic pay telephones; or

(2) pay telephones used to provide telephone service in correctional institutions;

(b) Notwithstanding any other statute, the commission shall retain jurisdiction to establish just and reasonable rates that may be charged by an incumbent local exchange carrier to a payphone service provider. Rates established under this section must be:

(1) based on the costs incurred by the incumbent local exchange carrier to provide the service;

(2) consistent with the requirements of 47 U.S.C. 276;

(3) nondiscriminatory; and



1 (4) consistent with the pricing guidelines for payphone service
2 providers established by the Federal Communications
3 Commission.



COMMITTEE REPORT

Madam President: The Senate Committee on Commerce, Economic Development and Technology, to which was referred Senate Bill No. 396, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, delete lines 1 through 16.

Delete pages 2 through 5.

Page 6, delete lines 1 through 37.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 396 as introduced.)

BUCK, Chairperson

Committee Vote: Yeas 6, Nays 0.

